

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MICHAEL FLORES, JR.,	§	
Plaintiff,	§	
	§	
v.	§	C.A. NO. C-09-80
	§	
NUECES COUNTY, ET AL.,	§	
Defendants.	§	

**MEMORANDUM OPINION AND ORDER DENYING WITHOUT PREJUDICE
MOTION FOR TRANSCRIPT AT PUBLIC EXPENSE**

Plaintiff, a prisoner proceeding *pro so* and *in forma pauperis* filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging various constitutional violations. All parties have consented to the jurisdiction of a United States Magistrate Judge to hear this case. Plaintiff has filed an interlocutory appeal to the Fifth Circuit of an order denying him appointment of counsel (D.E. 46), and now moves for a transcript of the evidentiary hearing held June 4, 2009 (D.E. 54).

Fees for transcripts furnished to persons permitted to appeal in forma pauperis shall be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). 28 U.S.C. § 753(f). Payment by the United States for printing of the record on appeal and transcripts may also be ordered if the record or transcript is **required** by the appellate court. 28 U.S.C. § 1915(c); Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126, 105 S.Ct. 2659 (1985). In this case plaintiff has not set forth the issues he plans to raise in his appeal; therefore a decision cannot be made as to whether the appeal is frivolous. The Fifth

Circuit Court of Appeals has not indicated that it required a transcript of any of the proceedings in this case. Moreover plaintiff has not demonstrated why any transcripts would be necessary to brief and argue any points of error to the Fifth Circuit Court of Appeals. Plaintiff's motion (D.E. 54) is denied without prejudice.

ORDERED this 24th day of November, 2009.

A handwritten signature in cursive script, reading "B. Janice Ellington", written over a horizontal line.

B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE